VIRGINIA LAW REGISTER

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Tax on Recordation of Deeds.

The act approved March 17th, 1910, in regard to the tax upon deeds, which amends and re-enacts § 13 of what we may call in short terms the "Tax Bill," has an ambiguity in it which has caused a good deal of trouble to our clerks. The language of the old act was as follows:

> "On every deed * * * which is admitted to record the tax shall be fifty cents; where the consideration of the deed or value of the property conveyed exceeds $300.00 and does not exceed $1,000.00 the tax shall be $1.00; and where the same exceeds $1,000.00 an additional tax of ten cents on every hundred dollars or fraction of one hundred dollars of such consideration, or the value of the property *in excess of* $1,000.00

This is the language of § 13 of the tax bill to be found on page 2196 of Pollard's Code.

In the act approved March 17th, 1910, page 488, Acts of 1910, the words *"in excess of one thousand dollars"* are left out. It would therefore appear from a reading of the act of March 17th and the act which amended it, that where there is an excess of $1,000.00, ten cents in addition to the $1.00 should be paid on every $100.00 *of the entire consideration.* In other words, the $1.00 tax is to be paid where the consideration is over $1,000.00, and then ten cents in addition is to be assessed upon the *entire consideration,* making an increase of $1.00 tax on every $100.00 or fraction thereof in excess of $1,000.00. For instance: Under the old act of a deed the consideration of which was $2,000.00, was brought for recordation, the tax upon it would be $2.00; under the new act it would be $3.00—$1.00 for the tax on the first $1,000.00 and then ten cents on the *entire value,* which would be $2.00 on the $2,000.00. The omission of the words "in excess of $1,000.00" from the new act would seem to indicate

this plainly, and the Auditor, acting under the opinion of the Attorney General, has so advised the clerk of one of the courts. His letter is as follows:

G. F. Compton, Esq.,
Clerk Corporation Court,
Charlottesville, Va.

DEAR SIR:

Your favor of the 31st instant received. I am advised by the Attorney General that the tax on a deed, the consideration of which is $1,100 is the specific tax of $1.00, and 10 cents on each $100 of the $1,100—$1.10, total $2.10.

The tax on a deed the consideration of which is $1,125.00 would, by calculating in the same manner, be $2.10.

Yours truly,
C. LEE MOON,
First Clerk.

The question that now addresses itself to the purchasers of land is—was this omission intentional or the result of carelessness on the part of the draughtsman of the law? Will it remain in the Statute books or be corrected by some future General Assembly? It means another burden on the transfer of land and no reason has yet been advanced to show why it was done.

Criticisms of the Courts.

The air has been full of denunciation of the courts in the last few weeks and an importance has been attached to these denunciations because the most violent have come from a man who once occupied the highest office in the gift of the nation.

The man in question is not a lawyer and without the benefit of legal training. His views upon the functions of the different branches of our government have indicated that he has never studied our constitution from the lawyers' or the legal standpoint and has little regard for the jealous care with which the Fathers guarded the encroachment of the one branch upon another. It was not to be expected, therefore, that he should view with patience the decisions of judges whose views of the law did not meet with his own ideas of what the law ought to be. He evi-

dently was of the opinion that the judges should make the law, cure the evil it was intended to remedy, whether the law was constitutional or properly passed, or did in fact what it was intended to do. In other words, that the courts should legislate, or cure defective legislation, wherever it became necessary. That the courts were only to construe the law as they found it never seems to have dawned on him. The importance—we might almost say the sacredness—of long settled and fixed precedents were whistled down the wind, in a series of whirlwind addresses.

The danger of such views—vehemently proclaimed and widely circulated—in a country like ours, where respect for anything is not of the highest order, cannot be overestimated.

And yet such views are not novel. President Lincoln in his first inaugural address said as follows:

> "I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court, nor do I deny that such decisions must be binding in any case upon the parties to a suit as to the object of that suit, while they are also entitled to very high respect and consideration in all parallel cases by all other departments of the Government. And while it is obviously possible that such decision may be erroneous in any given case, still the evil effect following it being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can be better borne than could the evils of a different practice. At the same time the candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people *is to be irrevocably fixed by decisions of the Supreme Court* the instant they are made in ordinary litigation between parties in personal actions *the people will have ceased to be* their own rulers, having to that extent practically resigned the Government into the hands of that eminent tribunal. Nor is there in this view any assault upon the court or the judges. It is a duty from which they may not shrink, to decide cases properly brought before them, and it is no fault of theirs if others seek to turn their decisions to political purposes."

We believe the most careful students of our system of government have looked upon the Supreme Court of the United States as not only one of the most unique tribunals, but as one of the most wonderful safeguards of human liberty ever conceived by the mind of man. That its decisions were ever to "fix the policy

of the government" no one has yet dreamed. But that it was intended to confine that policy to the limits fixed by the Constitution is indisputable. Woe to the Nation whenever it, or any other tribunal, ever allows that policy to transcend the limit fixed by our Supreme Law, or shall ever attempt to bend sure and inflexible principles of well-settled right before the fickle wind of popular opinion.

Fresh Justice.

"Fresh justice is the sweetest," saith my Lord Bacon. Whether Dr. Crippen agrees with the great Chancellor is doubtful; but no man interested in criminal jurisprudence can fail to be struck with the vast superiority of the English Criminal Courts over our own, when the report of this case is read. Crippen was arrested in July, tried in October, and will probably be hanged before this article is read. Every proper precaution was taken to see that the prisoner had a fair trial, but no useless delay was had.

The custom of granting a continuance of "the first calling of the case" on almost any pretext does not prevail in England as it does here. Witnesses do not dare to absent themselves from attendance on the Court when duly summoned. Legal process means something very real and stern over there. The appeal was disposed of in very short order; for the English Court of Criminal Appeal does not wait for any set term to pass upon appeals. The case is taken up and heard within a very short while after the appeal and that appeal must be taken at once. Technicalities which do not go to the merits and justice of the case are disregarded and a prompt decision is rendered.

Had Crippen been tried in almost any American Court his case would by this time have scarcely proceeded beyond an indictment. Continuances would have been granted and the case probably tried during the Spring and possibly not until Fall. An appeal would have been taken and then six months or a year elapse before a decision and by that time Crippen and his case would have been well nigh forgotten and the moral effect of his punishment practically lost. We know of but one case of crime of startling and sensational nature which was tried with such celerity—one in

our own State in which the murder was committed in September and the murderer executed the following February. The ablest and most astute counsel in the State were employed by the defense and many and various and troubling were the questions raised. But they were promptly answered, both in the lower and higher court and justice was done without vexatious delay or harmful haste. There is no earthly reason for the long drawn out trials and useless delays we have, if the courts will only see that their processes are obeyed and that no excuse is allowed for delay in the preparation or hearing of appeals.

Newspapers and Juries.

One point made in the case referred to was that the jury were allowed to see and read newspapers during the trial of the case. Our Supreme Court held that this fact constituted no reversible error. McCue's Case, 103 Va. 870. In Crippen s Case the fact that a juryman was for a time separated from the panel was assigned as error. It was shown that he was attended all during the time of his separation by an officer of the court. The English court refused to see any error in the separation.

The Supreme Court of the United States—in Holt's Case recently decided—holds that reading newspapers by the jury during the trial did not constitute error and the fact that the jury were allowed to separate was not under the circumstances sufficient to disturb the verdict, as it was apparent that no injustice was done the accused.

Our fear in this country of improperly convicting the accused has been well nigh turned into a shield for the guilty. The prosecution has to face sufficient difficulties anyway, and the acquittal of a guilty man is too often the result of our eagerness to acquit the innocent.

Finger Prints as Evidence.

A negro murderer has recently been convicted in a northern State upon the evidence of his finger prints, the bloody marks of which near the scene of the crime, compared with imprints made at the trial, showed an exact similarity. Two questions were raised in the trial—one as to the sufficiency of the evidence; the other the fact that the criminal was compelled to imprint his fingers upon paper properly prepared to take the marks.

We can see no reason why the evidence was not sufficient, if the examination and comparison were properly made. There is hardly any question—if expert testimony is to be believed—that no two human finger tips make similar impressions and that aided by the magnifying glass and photograph there is no difficulty in reading and identifying two impressions made by the same fingers. Certainly it is as convincing as the old and well settled rule that footprints can be compared with the shoe or foot to ascertain similarity. Handprints are no less convincing than footprints, but on the contrary an enlarged photograph can be thrown upon a screen and the similarity seen by the jury and court, as well as explained by the expert.

The second point is similar to another question raised in Holt's Case, *supra*. Counsel argued in that case that the accused by being made to put on a certain coat was compelled to give evidence against himself. The Supreme Court held that such was not the case. And so in compelling the prisoner to place his fingers upon the paper prepared to show their impress there was no more a violation of the rule appealed to in Holt's Case.

Contempt of Court by False Publication.

Crippen's Case brought out a new phase of contempt which we trust may establish a precedent. A newspaper in London in advance of the trial published a false account of a confession of his crime by Crippen. After the trial the editor of this paper was haled to the bar and fined the equivalent of one thousand dollars for contempt of court—this conduct on the part of the newspaper being held to be contempt in that it interfered with the proper conduct of the case

and was liable to prejudice the minds of prospective jurors and the general public. That such publications constitute contempt of court has been more than once held in England in a series of cases beginning with Rex *v.* Parke (1903) 2 K. B. 432; Rex *v.* Davies (1908) 1 K. B. 32. All publications in a newspaper intended to or calculated to obstruct or prevent the fair trial of an indictable offence are now declared to be in contempt when the matter is only in the stage of preliminary inquiry and has not got so far as committal for trial. Could some such rule be established here "yellow journalism" would have a very effective curb in its mouth and "trial by newspaper" robbed of much of its "jurisdiction."

What Is a Summons?

And speaking of the disregard of the processes of the courts an inquiry is suggested as to what constitutes a legal summons. The custom has grown up, we are informed, in police courts of verbally directing a policeman to summon verbally a witness, or even an accused person, to appear in the court and instances have occurred of heavy fines being inflicted for failure to obey such a summons. Has a party thus "summoned" been *legally* summoned? There can be but one answer to this question and that is in the negative.

Section 2941 of the Code of 1904 expressly provides that "subpœnas for witnesses may be issued by a justice directed to a constable or sheriff of any county or corporation." A subpœna must unquestionably be in writing. 4 Minor's Inst. (3rd Ed.), p. 825. A police justice is as much bound by this section as any other, and unless such a justice issues a subpœna in writing for a witness and delivers it to the proper officer, that officer has no right to summon a party to appear, and the failure or refusal to appear does not constitute contempt under such circumstances.

Equally true is this of a person accused of an offence. The police officer has a right to arrest for an offence committed in his presence and in cases of felony or reasonable suspicion of felony to arrest, without a warrant. His mere summons to appear is absolutely nugatory.

Matinee Hats and Poll Parrots in Courts of Justice.

Courts of justice occasionally—and we are glad to say only occasionally—have cases brought before them which arouse the risibilities of those who hear of or read them. The Westminster County Court in England and a court in Silesia have had two cases before them which are exceedingly comical.

The first is the case of Dann *v.* Curzon, in the Westminster (England) County Court. It appears that Mr. Dann, who is a press agent, suggested the following as an advertising scheme for a theatre in London. Two ladies and a gentleman were to be engaged—the ladies to occupy stalls and wear ultra fashionable hats, and the gentleman was to be seated behind them. The gentleman was to insist very audibly that the hats must be removed, and on the ladies' refusal the manager was to be sent for and the latter was to demand that the ladies should remove their hats or leave the theatre. The ladies refusing to do either, a technical assault was committed by the manager putting his hand upon one of the ladies' shoulders and directing her to leave, and at the same time handing both ladies the price of admission. The ladies were then to summon the manager for alleged assault. This was done and the Magistrate heard the charge in good faith and dismissed it, holding that the defendant was justified in doing what he had done. Now comes the milk in the cocoanut. Mr. Dann was to be paid one hundred pounds for his suggested scheme, and his wife, Mrs. Dann, who was the lady in question, was to be paid fifty pounds. The manager, desiring to have a little private farce of his own declined to pay and was promptly sued. Judge Woodfall, who tried the case, held that the plaintiffs could not recover on two grounds. The first, was that such a contract was contrary to public policy in that the two ladies being peremptorily and brusquely treated might well have aroused intervention on their behalf and led to a breach of the peace; and, secondly, that the advertising scheme itself was a fraud on the administration of justice which could not be permitted. There was no question about the agreement to pay Mr. and Mrs. Dann, but they lost the case for the reasons given.

The other curious case comes from Silesia, in which a husband

sought a divorce from his wife, and the only direct evidence which he could bring forward against her was the testimony of his parrot. He had been away from home for six weeks, and when he returned he heard the parrot persistently repeat the words, "My dear Arthur!" followed in a louder tone by "My sweetheart, my beloved!" He thereupon brought the suit, making one Arthur, an intimate friend, the co-respondent. The defendant's counsel contended that only a person could be called as a witness, and that the parrot's evidence was not admissible; but before the point had been decided the wife confessed. It might be possible that the parrot's cries could have been admissible as circumstantial evidence, but we do not quote the case as a precedent—rather as a warning to the younger members of the Bar to refrain from endearing expressions in the presence of any bird.